

REMARKS

Applicants expressly reserve the right to prosecute the non-elected subject matter in a divisional application, if necessary.

Applicants hereby elect to prosecute the invention in Group IV, comprising claim 27 with traverse in this application. Applicants do not believe an election of species is required, because the species outlined by the Examiner at pages 3-4 of the Office Action do not read on the elected group.

Regarding the traversal, Applicants refer the Examiner to MPEP §803 which recites in part: "There are two criteria for a proper requirement for restriction between patentably distinct inventions:

(1) The inventions must be independent * * * or distinct as claimed * * *;
and

(2) There must be a serious burden on the examiner if restriction is not required * * *. [All emphasis added.]"

Applicants submit the claims comprising Groups I – VI share the same inventive concept, wherein all of the claims share an expression vector which comprises a short hairpin RNA (shRNA) construct.

Moreover, as outlined above, the Examiner's authority to insist upon restriction only extends to those situations where the failure to insist upon restriction would subject the Examiner to serious burden.

On the present record, the Examiner has not established that the examination of all three groups would subject him to a serious search burden. Thus, for example, Groups II, III, V and VI are separately classified in subclasses, but Groups II, III, V and VI are still classified in the same class. In addition, the Examiner does not address the search burden issue in any respect. In view of the foregoing, and in the absence of a showing of a serious search burden, Applicants submit that the Examiner is required to examine all of Groups I-VI in this single application.

Because the claims all share the same inventive concept and the Examiner is not subject to an undue search burden, Applicants submit that restriction is improper. Accordingly, Applicants respectfully traverse the restriction between Groups I to VI, and request the withdrawal of the requirement.

Early and favorable action is earnestly solicited.

CONDITIONAL PETITION FOR EXTENSION OF TIME

If entry and consideration of the amendments above requires an extension of time, Applicants respectfully request that this be considered a petition therefor. The Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No. 14-1263.

USSN 10/685,837
Restriction Response

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ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess, to Deposit

Account No. 14-1263.

Respectfully submitted,

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